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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ROXY APPLGATE, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
WEST HILLS CONVALESCENT )  
CENTER, LIMITED PARTNERSHIP, )  
and WEST HILLS CONVALESCENT )  
CENTER, LIMITED PARTNERSHIP )  
d/b/a/ WEST HILLS CONVALESCENT )  
CENTER, )  
 )  
Defendants. )  
\_\_\_\_\_ )

No. CV-04-715-HU

FINDINGS & RECOMMENDATION

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7 HUBEL, Magistrate Judge:

8 Plaintiff Roxy Applegate brings this Title VII action against  
9 her former employer, West Hills Convalescent Center.<sup>1</sup> Plaintiff  
10 moves to amend her Complaint to add a new defendant, Sage Company.  
11 I recommend that the motion be granted.

#### 12 BACKGROUND

13 Plaintiff filed her Complaint on May 26, 2004. On that date,  
14 the Court issued an initial pretrial scheduling order which set,  
15 among other dates, a September 23, 2004 date for filing all  
16 pleadings, joining all claims and parties, and completing  
17 discovery. (Docket #2).

18 I conducted an initial Rule 16 conference on September 16,  
19 2004. Neither party filed a formal motion to extend any deadlines  
20 before that conference. However, in response to an inquiry by the  
21 Court about the time required to complete discovery, the parties  
22 indicated they needed approximately ninety more days. The issue of  
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25 <sup>1</sup> Although the Complaint suggests that there are two  
26 separate entities named as plaintiffs ("West Hills Convalescent  
27 Center, Limited Partnership," and "West Hills Convalescent  
28 Center, Limited Partnership d/b/a/ West Hills Convalescent  
Center,"), the parties appear to treat these two defendants as a  
single entity. I will therefore refer to one defendant, West  
Hills Convalescent Center.

1 extending the deadline for amendment of pleadings or joinder of  
2 parties was not discussed. I extended the fact discovery deadline  
3 to January 10, 2005.

4 On December 8, 2004, plaintiff moved to extend the discovery  
5 deadline for approximately another sixty days, to March 18, 2005.  
6 Defendant did not oppose the motion. The motion did not mention  
7 the deadline to amend pleadings or join parties or claims. On  
8 January 12, 2005, I conducted a hearing on the motion. The  
9 pleading amendment and joinder deadline was not discussed. I  
10 granted the motion and extended fact discovery to March 18, 2005.

11 Depositions in the case took place in January 2005 and  
12 continued into early March 2005. Plaintiff filed the motion to  
13 amend to add Sage Company on March 2, 2005.

#### 14 STANDARDS

15 Federal Rule of Civil Procedure 15(a) provides that leave to  
16 amend a complaint "shall be freely given when justice so requires."  
17 The court should apply the rule's "policy of favoring amendments  
18 with extreme liberality." DCD Programs, Ltd. v. Leighton, 833 F.2d  
19 183, 186 (9th Cir. 1987) (internal quotation omitted). In  
20 determining whether to grant a motion to amend, the court should  
21 consider bad faith, undue delay, prejudice to the opposing party,  
22 futility of amendment, and prior amendments to the complaint.  
23 Sisseton-Wahpeton Sioux Tribe v. United States, 90 F.3d 351, 355-56  
24 (9th Cir. 1996). Delay, by itself, will not justify denying leave  
25 to amend. DCD Programs, 833 F.2d at 186.

#### 26 DISCUSSION

##### 27 I. Appropriate Standard

28 Defendant, relying on Johnson v. Mammoth Recreations, Inc.,

1 975 F.2d 604 (9th Cir. 1992), contends that the motion should be  
2 reviewed under the "good cause" standard of Federal Rule of Civil  
3 Procedure 16(b), rather than the standards governing amendment of  
4 pleadings under Rule 15(a). Johnson held that the good cause  
5 standard in Rule 16(b), and not the more liberal standard of Rule  
6 15(a), applies when a party seeks to join an additional defendant  
7 after the deadline set by the district court for joinder of  
8 parties. Id. at 608-09.

9 While defendant's argument is consistent with Johnson's  
10 holding, I reject its application in this case. This Court's  
11 initial pretrial scheduling order, issued by the Clerk's Office  
12 upon filing the case, ties the deadline for amendment and joinder  
13 to the discovery deadline. Without a separate discussion of that  
14 date at the September 16, 2004 Rule 16 conference, or again at the  
15 January 12, 2005 motion hearing on plaintiff's unopposed motion to  
16 extend the discovery and dispositive motion deadlines, I consider  
17 the joinder and amendment deadline to have moved along with the  
18 discovery deadline. Thus, the March 2, 2005 motion to amend was  
19 filed before the March 18, 2005 discovery deadline which I  
20 interpret to be the deadline for amendment of pleadings and joinder  
21 of claims and parties. As such, the appropriate standard for  
22 analyzing plaintiff's motion to amend is Rule 15(a) and not Rule  
23 16(b) .

#### 24 II. Rule 15(a)

25 Defendant is a skilled nursing facility. The parties agree  
26 that Sage Company is a management company hired by defendant to run  
27 its operations in many respects. Plaintiff seeks to add Sage  
28 Company as a defendant because plaintiff contends that Sage Company

1 is either an indirect or joint employer of plaintiff for purposes  
2 of her Title VII claim. See Equal Employment Oppty Comm'n v.  
3 Pacific Maritime Ass'n, 351 F.3d 1270, 1274-76 (9th Cir. 2003)  
4 (discussing standards for indirect and joint employers in Title VII  
5 cases), reh'g en banc granted, 367 F.3d 1167 (9th Cir. 2004).

6 While there is evidence in the record suggesting that  
7 plaintiff knew of Sage Company's existence even before this action  
8 was filed<sup>2</sup>, plaintiff asserts that she was unaware of the extent of  
9 Sage Company's control of defendant's operations and the fact that  
10 it was Sage Company that actually terminated her employment, until  
11 the depositions in the case were taken.

12 Defendant's primary argument in opposition to the motion is  
13 that it is untimely. As noted above, delay, by itself, is not a  
14 sufficient basis for denying a motion to amend. Moreover, I accept  
15 plaintiff's counsel's representation that he did not believe he had  
16 a basis for asserting a joint or indirect employer argument against  
17 Sage Company until after the depositions. Thus, I do not find the  
18 motion untimely.

19 There is no evidence of bad faith and defendant does not raise  
20 a futility argument. Defendant suggests that Sage Company might be  
21 prejudiced by being added at this stage in the case. However,  
22 defendant's counsel stated on the record during an April 13, 2005  
23 hearing on a motion to compel at which this motion to amend was  
24 also discussed, that he would be Sage Company's counsel if Sage  
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26 <sup>2</sup> The offer of employment letter sent to plaintiff was on  
27 Sage Company letterhead. An August 2004 Request for Production  
28 of Documents by plaintiff to defendant sought certain Sage  
Company documents.

1 Company were added to this case. It is clear that Sage Company has  
2 known of the litigation from the start. Some of the documents  
3 defendant has produced in the case have actually been in Sage  
4 Company's possession. Given Sage Company's knowledge and the fact  
5 that current defense counsel will be representing Sage Company, I  
6 find defendant's prejudice argument unpersuasive.

7 There being no delay or prejudice, it is appropriate to allow  
8 plaintiff to amend her Complaint to add Sage Company as a  
9 defendant.

10 CONCLUSION

11 I recommend that plaintiff's motion to amend (#27) be granted.

12 SCHEDULING ORDER

13 The above Findings and Recommendation will be referred to a  
14 United States District Judge for review. Objections, if any, are  
15 due May 11, 2005. If no objections are filed, review of the  
16 Findings and Recommendation will go under advisement on that date.

17 If objections are filed, a response to the objections is due  
18 May 25, 2005, and the review of the Findings and Recommendation  
19 will go under advisement on that date.

20 IT IS SO ORDERED.

21 Dated this 26th day of April, 2005.

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23  
24 /s/ Dennis James Hubel  
25 Dennis James Hubel  
26 United States Magistrate Judge  
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